

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Deployment of Wireline Services Offering) CC Docket No. 98-147
Advanced Telecommunications Capability)

JUL 22 1999

REPLY COMMENTS OF
INTERMEDIA COMMUNICATIONS INC.

Intermedia Communications Inc. ("Intermedia"), by its attorneys, hereby submits its reply comments in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.¹ In these reply comments, Intermedia addresses one issue: to the extent that the Commission creates a line sharing obligation on Incumbent LECs ("ILECs") pursuant to section 251(c)(3) of the Act, it should require loop costs to be allocated between voice services and advanced services in a way that comports with the forward-looking economic cost of providing each service. Any other result would violate the technology-neutral underpinnings of the Act, and thus should be rejected by the Commission.

I. INTRODUCTION

Currently, a competitive provider that offers digital subscriber line ("DSL") service must offer these services over an unbundled stand-alone loop acquired from the local exchange carrier. A competitive DSL provider is obliged to recover all of the costs of its stand-

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¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147* (rel. Mar. 31, 1999) ("FNPRM").

alone loop from the service charges it imposes on its customers. Meanwhile, the interstate DSL tariffs filed by ILECs, and already approved by the Commission, include no loop cost. This pricing approach incorrectly attributes all of the cost of the loop to the underlying voice services, allowing the DSL service to free ride on the loop. It is impossible for competitive providers of DSL services to match the ILEC retail rates for DSL services within this pricing framework because such competitive providers must pay prohibitive charges for the ILEC local loop.

Many competitive LECs ("CLECs") propose that the Commission put in place rules that require prices charged for the data portion of shared lines be fair and nondiscriminatory.² ILECs on the other hand, generally submit that loop cost should not be allocated among services. ILECs point to the fact that CLECs, like ILECs, have the option to offer both voice and advanced services over the same loop and achieve the same economies of scope the ILECs do.³ Intermedia submits that DSL services – whether offered by ILEC or CLEC – should not get a free ride. The Commission should require loop costs to be allocated between voice services and advanced services pursuant to Total Element Long Run Incremental Cost ("TELRIC") standards.

² See Comments of Northpoint Communications, Inc. at 28, Covad Communications Company, at 39, Rhythms Netconnections, Inc., at 12. In essence these commenters suggest that ILECs should be permitted to charge no more to CLECs for access to shared lines than they impute to themselves for their own competing services. These parties argue that since ILECs have chosen to allocate no loop costs to the data portion of shared loops in their own retail services, then statutory requirements of nondiscrimination mandate that CLECs be allowed to provide DSL access on the same terms.

³ See, e.g. Comments of BellSouth Corporation, at 25-27, GTE, at 23.

II. ANY ILEC LINE SHARING OBLIGATION SHOULD REQUIRE LOOP COSTS TO BE ALLOCATED BETWEEN VOICE SERVICES AND ADVANCED SERVICES IN A WAY THAT COMPORTS WITH THE FORWARD-LOOKING ECONOMIC COST OF PROVIDING EACH SERVICE

As a legal matter, Intermedia supports the view that the Commission has the authority pursuant to section 251(c)(3)⁴ of the Act to require ILECs to unbundle loop spectrum, such that one carrier could offer voice services while another carrier offers data services over the same line. To the extent that the Commission utilizes its section 251(c)(3) authority to create a line sharing obligation on ILECs, it should require loop costs to be allocated between voice services and advanced services in a way that comports with the forward-looking economic cost of providing each service.

Failure to allocate the cost of the local loop according to cost-based pricing principles would contradict the pricing standard set forth by Congress and would violate the technology-neutral underpinnings of the Act. For example, permitting any carrier that utilizes DSL to provide high-speed data services with a loop cost of zero would discriminate against other carriers that provide high-speed data services over fractional DS1 products. This outcome would serve to permit an arbitrary regulatory decision – rather than the merits of a technology – drive the high-speed data market.

In adopting the TELRIC standard for pricing network elements unbundled pursuant to section 251(c)(3), the Commission noted that “the price of a network element should include the forward-looking costs that can be attributed directly to the provision of services using

⁴ 47 USC § 251(c)(3).

that element.”⁵ In accordance with this principle, to the extent that voice and data channels are provided over a single loop, the Commission’s TELRIC standard mandates that the price of each channel be attributed to the services provided over each channel. Any other outcome would result in the subsidization of one channel by the other channel, which contradicts the fundamental premise of TELRIC pricing.

The technology-neutral framework established in the Act by Congress similarly requires that cost-causation principles drive rates set for voice and data channels if the Commission requires loop spectrum unbundling. As Intermedia has noted on several occasions, the Act was designed to be technology neutral, such that market forces, rather than regulatory distinctions, would drive the advancement of the nation’s communications infrastructure. In the words of the Commission, “Congress made clear that the 1996 Act is technologically neutral and is designed to ensure competition in all telecommunications markets.”⁶ Similarly, the Commission has noted that “[it is] mindful that, in order to promote equity and efficiency, [it] should avoid creating regulatory distinctions based purely on technology.”⁷

It is vital in this proceeding that, to the extent that the spectrum unbundling is required, the Commission make extremely clear that variations from cost-causation principles simply will not be tolerated. A definitive ruling by the Commission regarding loop allocation costs for voice and advanced services would ensure that these costs are allocated consistently throughout all jurisdictions. Failure to do so would invite some state commissions and ILECs to

⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499, ¶ 673 (1996).

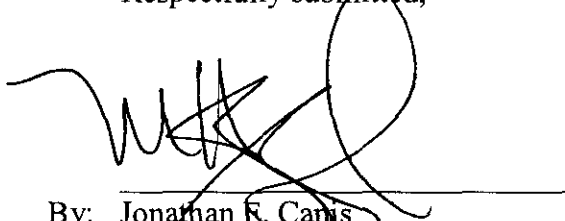
⁶ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking* at ¶ 11 (re. Mar. 31, 1999).

continue to take the position that they may restrict CLEC access to UNEs depending on the status of the CLEC customer or the service used by the CLEC customer.

III. CONCLUSION

For the foregoing reasons, Intermedia submits that to the extent that the Commission determines it should create an ILEC line sharing obligation pursuant to section 251(c)(3) of the Act, the Commission should mandate that loop costs be allocated between voice services and advanced data services in a way that comports with the forward-looking economic cost of providing each service, as contemplated by the Act.

Respectfully submitted,



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⁷ Federal-State Joint Board on Universal Service, *Report to Congress*, CC Docket No. 96-45, ¶ 98 (rel. Apr. 10, 1998).

CERTIFICATE OF SERVICE

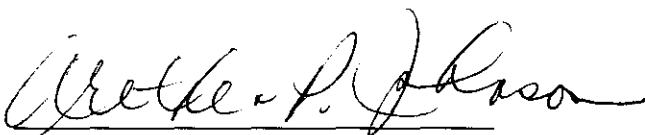
I hereby certify that copies of the foregoing **REPLY COMMENTS OF INTERMEDIA COMMUNICATIONS INC.** were served this 22nd day of July 1999, by hand on the following:

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A handwritten signature in black ink, appearing to read 'Arethea P. Johnson', written over a horizontal line.

Arethea P. Johnson